In the Matter of License No. 81606
Issued to: EDGAR F. CHRISTENSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EDGAR F. CHRISTENSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 7 May, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked License No. 81606 issued to Edgar F. Christensen upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Master on board the U. S. Army Tug M/V L.T. 57 under authority of the document above described, on or about 17 March, 1953, while said vessel was underway with the manned U. S. Army BARC 1-X in tow, he failed to require navigation lights to be lighted on the tow after sunset (First Specification); he failed to cast loose the towing wire and search for survivors when he could not locate the tow and maneuvering was restricted by strain on the towing wire (Second Specification); he failed to promptly check on the tow when it was reported that the tow wire was paying out against the tension of the brake (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Engineer of the L.T. 57, the Chief Mate of the L.T. 57, and the Coast Guard Ensign in command of the WPB 83412 which recovered the bodies of the three man crew of the BARC 1-X. USC&GS Chart 5402 was also placed in evidence to show the various positions of the tug and tow while underway between Monterey, California, and San Francisco; and extracts from the logbook of the L.T. 57 were received in evidence.

In defense, Appellant offered in evidence the testimony of the Chief of the Marine Section, Fort Mason, California, who testified about the preliminary arrangements for the voyage. Appellant also testified under oath.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three

specifications. He then entered the order revoking Appellant's Master and Pilot License No. 81606 but provided that a License as Chief Mate, Inland and Coastwise, with former pilotage endorsements thereon, shall be issued forthwith to Appellant subject to a ninety day suspension from 7 May, 1953.

From that order, this appeal has been taken, and it is urged that:

POINT I. It was legally erroneous to take action against Appellant's inland waters master's license because he was operating under his coastwise license and whatever he did related only to his fitness to operate coastwise. Appellant did not need an inland license and he was not operating under it. Appellant's coastwise license (issued under 46 C.F.R. 10.05-5 and 10.05-45) and his inland license (issued under 46 C.F.R. 10.05-15 and 10.05-49) were two separate and distinct licenses which required different qualifications and experience under the Regulations. These two licenses were completely independent of each other except that they were both issued to Appellant in the form of a single piece of paper as a matter of convenience. This is similar to the cases where the Coast Guard uniformly takes the position that suspension or revocation of a license is up to the State when a bar pilot holding both Federal and State licenses is acting under the State license, even though a pilot must hold a Federal license in order to obtain a State pilot's license. The instant case is stronger because Appellant's two Federal licenses are not interdependent in any sense.

POINT II. The order was unduly severe and should be mitigated. Appellant's coastwise license should, at most, be suspended and no action should be taken against his inland license since several mitigating factors were omitted or understated by the Examiner. Appellant committed an error of judgment when he came to the reasoned decision that the tow had broken loose from the towline; but he was greatly influenced by the repeated statements, of the builder's representatives on the tug and others, that the BARC was unsinkable even when filled with water. There was no indication of unseaworthiness or trouble of any kind when in rougher weather than at the time of the casualty; and no distress signals, as agreed upon, were received from the BARC. The failure to turn on the BARC's navigation lights did not indicate trouble since she still rode well after sunset. Appellant decided to wait until 2000 because the weather conditions made it unsafe to shorten the tow wire. It was necessary to retain the towline in order to secure it to the tow again if she had broken loose. The BARC sank unexpectedly and it is doubtful that Appellant could have saved the lives of the three men even if he had acted promptly. This was a very serious casualty but the Examiner allowed his knowledge of subsequent events to influence his judgment as to the actions of Appellant who did not have the benefit of such hindsight. The unexplained deaths and the sinking of the BARC were not caused by any act or omission on the part of the Appellant. For these reasons, it is respectfully submitted that the order should be modified.

APPEARANCES: Messrs. Derby, Cook, Quinby and Tweedt of San Francisco, California.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 17 March, 1953, Appellant was serving as Master on board the U.S. Army Tug M/V L.T. 57 and acting under authority of his License No. 81606 while en route from Monterey, California, to San Francisco with the U.S. Army BARC 1-X in tow.

The L.T. 57 is a single screw, steel hull tug of 394 gross tons and 123 feet in length. Her full maneuvering speed is 300 RPM.

The BARC 1-X was an experimental amphibious craft, steel hull and deck, 60 feet in length, and a beam of 28 feet. She was powered by four Diesel engines but could carry only a very limited fuel supply. She was considered to be unsinkable. Her crew consisted of an Army Captain and two Army enlisted men. The Captain had been instructed to use a flashlight for a distress signal and to turn on the navigation lights at sunset which was 1819.

Over Appellant's protest against towing the BARC 1-X after dark, he was ordered to get underway at 1300 on 17 March, 1953; and the L.T. 57 departed from Monterey at 1325 with the BARC 1-X in tow on 500 feet of a two inch wire cable. The towline was secured to the tow by a 60 or 90 foot bridle shackled to both sides of the tow. Outside the harbor, speed was set at 270 RPM (6 knots) and the length of the towline was increased to 1200 feet. This amount of cable weighed approximately 3 3/4 tons and sagged about 90 feet. The tow appeared to ride high in the water and the operation was carried out satisfactorily for about six hours despite a rough sea and a northwest wind of force 5. The various courses of the tug were in a northwesterly direction.

The navigation lights of the BARC were not lighted at sunset and at 1915 darkness completely obscured the tow. Since the sea was moderating at this time, Appellant decided to wait until 2000 to shorten the towline and investigate. Neither the tow nor her lights were subsequently seen from the tug; and no signals were received from the tow. No attempt was made to signal the tow or to train a searchlight on her.

At 1945, the Chief Engineer heard the towline brake slipping and investigation by Appellant disclosed that the towline had paid out 20 feet against the brake tension. At 1950, speed was reduced to 120 RPM. No effort was made to contact the BARC. Appellant thought that the cable had parted and was fouled on the bottom at a depth of 240 feet; and that the BARC was proceeding under her own power. At this time, the sea was moderate to calm, there was a northwest wind of about force 4, and the night was dark and clear.

At about 2000, the L.T. 57 took a heavy roll to port and right full rudder had no effect. At 2010, the engines commenced making 210 RPM but the tug did not make any way through the water and more wire ran out. At 2015, engine speed was reduced to 120 RPM and Appellant ordered the towline reeled in. It was hauled in to 500 feet but it could be taken in no farther.

Appellant ordered the towline paid out, reversed the course of the L.T. 57 and steamed ahead the length of the cable, 1800 feet, before the progress of the tug was again stopped by the towline. While in this position until 2400, the tug's searchlight was used in an unsuccessful attempt to locate the BARC. At 0230, the tug slipped her cable and proceeded to San Francisco. Appellant had notified the U.S. Army and the Coast Guard of his difficulties at about 2000.

The WPB 83412 recovered the bodies of the three crew members of the BARC with the assistance of flare illumination from a plane. All three had on life preservers and there were no marks on their bodies which could account for the deaths. It was later discovered that the BARC had sunk with the towline intact.

There is no record of prior disciplinary action having been taken against Appellant during the approximately 30 years he has been operating tugs.

OPINION

Appellant is incorrect in his contention that he had two separate Federal licenses for coastwise and inland waters and that the two licenses were issued to him on the same piece of paper only as a matter of convenience (Point I).

Title 46 United States Code 224 includes the authorization of the Coast Guard to license and classify Masters of vessels; and the Coast Guard has placed all deck officers' licenses in the same category. Title 46 Code of Federal Regulations 10.02-7(b) states that upon the issuance of a new license or raise in grade, the applicant shall surrender his old license. Therefore, Appellant was entitled to hold only one Federal license as Master, regardless of the extent of his qualifications and experience, with his authorizations to operate in coastwise and inland waters shown either on the face of the license or by endorsement on the license.

Consequently, Appellant is not entitled to the issuance of a license for inland waters although he was operating in coastwise waters at the time of the casualty. This is the practical as well as the proper answer because it is evident that proof of such serious charges of negligence, as are contained herein, casts serious doubt on Appellant's entitlement to the privilege of holding a Master's license of any description. It would be inconsistent with the Coast Guard's statutory duty to protect lives and property, if Appellant was permitted to continue to operate as a Master on inland waters.

The present situation is distinguishable from those cases where a pilot is operating primarily under a State license although he also holds a Federal license. The Coast Guard cannot take any action against the pilot's State license. Although jurisdiction against the Federal license exists, the Coast Guard usually does not take action if appropriate action is taken against the pilot's State license. There are no such Federal-State jurisdictional distinctions present in this case; and Appellant had only one license rather than two. It is also worth mentioning that a Federal license is not a legal prerequisite to obtaining a State license.

Appellant has pointed out several factors which, he states, suggest that the order imposed by the Examiner was unduly severe and should be mitigated to a suspension of Appellant's coastwise license (POINT II).

I do not agree with this proposition. Despite the fact that Appellant might have been lulled into a false sense of security by hearing the repeated assertations that the BARC was unsinkable, it remained his constant responsibility to exercise every reasonable precaution of an experienced seaman for the safety of his tow. Appellant's responsibility was greater than usual because the two was an unfamiliar type of craft and the lives of the three men on board were dependent on

Appellant's judgment. Nevertheless, he failed to take timely and corrective action after receiving several warnings of the possibility of danger.

Appellant did not attempt to contact the men on the tow when they failed to carry out his instructions to turn on the navigation lights. He did not take any action to locate the tow even after darkness prevented the observation of the unlighted tow from the tug; or, later, when the tug could not make any way through the water because of the strain on the wire towline. Finally, there was no attempt to conduct a thorough search after the tug had reversed her course and still there was no sign of the tow or the three men.

If the BARC's navigation lights had been lighted as required, Appellant would have been immediately alerted when the lights disappeared at the time the tow began to sink. If it would have been too risky to haul in the tow in order to find out why her lights were not on, the least Appellant could have done was to signal the tow and keep her under constant observation with a searchlight; especially since his original protest against making a portion of the trip in darkness showed his recognition of some degree of danger attached to the operation. When it was discovered that the towline was slipping and Appellant thought that the towline had parted, it should have been perfectly obvious to him that the tow would have signalled her predicament if she were still afloat and operating under her own power. And, undoubtedly, there was no excuse for not slipping the towline and searching the area after the tug had reversed course and proceeded as far as possible with the cable attached. The BARC had sufficient fuel to carry her to the nearest land.

It is not my conclusion that appropriate action by Appellant would necessarily have saved the lives of the three men on the BARC. But it is my opinion that Appellant's conduct was much more than an error of judgment and that if he had exercised all the precautions required of him under the circumstances, there is a strong possibility that the casualty would not have been as disastrous as it was. I agree with the order of the Examiner and his statement that "the obligation of the tug to determine its tow's position and situation was overwhelming and cannot be excused."

ORDER

The Order of the Examiner dated at San Francisco, California, on 7 May 1953, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 6th day of October, 1953.